



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 29 2018

REPLY TO THE ATTENTION OF:

Ms. JoAnna M. Perdzoek
TRC
150 North Patrick Boulevard
Suite 180
Brookfield, Wisconsin 53045

Dear Ms. Perdzoek:

This letter is in reply to your January 11, 2018, letter to Edward Nam, Director Air and Radiation Division, Region 5, United States Environmental Protection Agency regarding the classification of air emissions from the testing of final products at the Briggs & Stratton Corporation (B&S) facility in Wauwatosa, Wisconsin. As described in your letter, B&S operates a facility that manufactures engines and also makes generators and power equipment that include those engines. Focusing on just the final product testing of such power equipment (lawn tractors, lawn equipment, snow removal equipment, and power washers),¹ B&S states that the engines installed in such power equipment meet the regulatory definition of nonroad engines and are operated to conduct end-of-line quality testing of the final product's mechanical systems, not engine testing. Accordingly, B&S believes that the emissions from these engines should not be considered emissions from a stationary source under the Clean Air Act (CAA), and, thus, that the emissions should not be subject to stationary source permitting requirements under the CAA.

The Wisconsin Department of Natural Resources (WDNR) is the permitting authority for air pollution control construction and operation permits within the State of Wisconsin. Therefore, WDNR is responsible for making the final determination whether these emissions should be excluded from Wisconsin's stationary source regulation and permitting. The WDNR issues air pollution control permits pursuant to its federally-approved rules found in its state implementation plan. EPA is only providing its recommendation based on the facts provided in your letter dated January 11, 2018, after consideration of the CAA and applicable Federal CAA regulations and guidance. The State of Wisconsin's federally-approved air pollution control regulations may be more stringent than the Federal requirements.

EPA's evaluation is based on the information you provided us, and our interpretation of the relevant Federal provisions pertaining to what constitutes a "stationary source." EPA's view is that direct emissions from the engines during final product testing described above are not subject to stationary source permitting requirements as long as those engines meet the applicable

¹ The EPA's response is limited to just this portion of the facility's operations, concerning final product testing of lawn tractors, lawn equipment, snow removal equipment, and power washers described in B&S's letter, and does not extend to any other manufacturing operations at the facility.

definition of "non-road engine." Under CAA Section 302(z), a stationary source is defined as "...any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216." As stated, the two exceptions from the definition of a stationary source are (1) direct emissions from internal combustion engine used for transportation purposes; and (2) direct emissions from a non-road engine or non-road vehicle. The CAA defines "non-road engine" as an "internal combustion engine that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title." Additionally, EPA's regulations for highway, stationary, and non-road programs, found in Title 40 of the Code of Federal Regulations part 1068, defines "non-road engine" as an internal combustion engine that meets the following criteria:

- 1) It is (or will be used) in or on a piece of equipment that is self-propelled or serves a dual purpose of both propelling itself and performing another function (such as garden tractors off-highway mobile cranes and bulldozers);
- 2) It is (or will be) used in or on a piece of equipment that is intended to be propelled while performing its function (such as lawn mowers and string trimmers");
- 3) By itself or in or on a piece of equipment, it is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Examples of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

However, the regulations go on to specify that an internal combustion engine is not a nonroad engine if it meets any of the following criteria:

- 1) The engine is used to propel a motor vehicle, an aircraft, or equipment used solely for competition.
- 2) The engine is regulated under 40 CFR part 60, (or otherwise regulated by a federal New Source Performance Standard promulgated under section 111 of the Clean Air Act (42 U.S.C. 7411)). Note that this criterion does not apply for engines meeting any of the criteria of paragraph (1) of this definition that are voluntarily certified under 40 CFR part 60.
- 3) The engine otherwise included in paragraph (3) above remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. For any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced, include the time period of both engines in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (*i.e.*, at least two years) and that operates at that single location approximately three months (or more) each year. See §1068.31 for provisions that apply if the engine is removed from the location.

As stated earlier, the WDNR will ultimately be the authority that determines whether these

emissions can be excluded from stationary source regulation and permitting. We note that while these emissions may not be subject to stationary source permitting, unless otherwise preempted by CAA Section 209, the WDNR retains the authority to use other means to control pollution from these sources should the State have a need to in the future. These include but may not be limited to the following: "in-use" regulations (regulations approved into the state implementation plan to control emissions from in-use mobile sources), i.e., limits on hours of operation or fuel use², and indirect source review programs (regulations or programs designed to control emissions from indirect sources), i.e., controlling mobile source emissions from a parking garage³.

We will continue to work closely with the WDNR if they have any questions regarding our recommendation during their permitting process, or believe that there is additional information which would impact their final permitting decision. If you have any questions regarding this letter, please contact Constantine Blathras, of my staff, at (312) 886-0671.

Sincerely,



for Genevieve Damico
Chief
Air Permits Section

² In *Engine Manufacturers Association v. EPA*, 88 F.3d 1075 (D.C. Cir. 1996), the court upheld EPA's interpretation that "the 'other requirements' states are preempted from adopting are ... limited to ancillary enforcement mechanisms such as certificates and inspections" and do not include "in-use" regulations.

³ CAA section 110(a)(5) specifies that EPA cannot require indirect source review programs, but that states retain such authority and can voluntarily submit such a program for approval into the state implementation plan to assist the state in maintaining or attaining the National Ambient Air Quality Standards (NAAQS).

